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Before the

COMMITTEE ON FOREIGN AFFAIRS
Subcommittee on Africa, Global Health, Global Human Rights,
and International Organizations

Continuing Repression by the Vietnamese Government
June 4, 2013

Mr. Chairman and distinguished members of the Committee:

Since the most recent Congressional hearing on Vietnam less than two months ago, the human rights conditions in that communist country have already deteriorated significantly.

On May 5, the police blocked or dispersed “human rights picnics” in Ha Noi, Hai Phong, Nha Trang and Saigon, detaining and beating up many rights activists in public areas or at the police stations.

On May 16 the People’s Court sentenced Nguyen Phuong Uyen, a 20-year old college student, to six years and Dinh Nguyen Kha, a 25-year computer technician, to eight years in prison on subversion charges. All they did was to speak out against China’s expansionism.

Then on May 26 the police arrested and detained Truong Duy Nhat, a well-known blogger who set up a public vote of confidence of government leaders, on charges of abusing democratic freedoms. His survey showed that only 7% of the respondents had confidence in Prime Minister Nguyen Tan Dung, and 9% in the National Assembly Speaker Nguyen Phu Trong.

On May 29, eight Montagnard Catholics were sentenced to between three and 11 years for “undermining national unity.”

Repression and persecution have intensified right on the heels of the latest U.S.-Vietnam human rights dialogue. This intensification is deplorable but not surprising. In April a U.S. delegation led by the State Department was in Ha Noi for a one-day dialogue on human rights. It was attended by Vietnamese rank-and-file government officials. Ten days later a large U.S. delegation led by the Acting US Trade Representative spent 3 days in Vietnam to negotiate Trans-Pacific Partnership; they met with the Vietnamese President, a Deputy Prime Minister, several ministers and deputy ministers. The message to the government of Vietnam was very clear: The U.S. cares more about trade than human rights.

Some policymakers may argue that U.S. policies on human rights must be calibrated to accommodate a wide array of national interests. No other national interests should trump the rights and interests of U.S. citizens. The government of the Socialist Republic of Vietnam (SRV) has massively violated the rights and interests of U.S. citizens.

Over the past 38 years the Vietnamese government has illegally confiscated land, real estate and other properties of up to half a million U.S. citizens of Vietnamese origin. We estimate the total amount of compensations owed by the Vietnamese government to be between \$50 billion and \$100 billion.

In 1975 Communist troops from the North invaded the Republic of Vietnam, aka South Vietnam. As a result over a million South Vietnamese fled or were evicted from the country. Most of them later resettled in the U.S. as refugees. They left behind so many vacant real properties that on April 14, 1977 the Vietnamese government issued Executive Decision 111/1977/CP to place

them under temporary management by the state. The Executive Decision, in pertinent part, states that: *“All residential housing, land and properties absent of owners who are Vietnamese or foreigners are directly administered by the government. When these owners return, the government will resolve [the matter] with them. No one may unilaterally expropriate, transfer ownership, sell or buy residential housing or properties in the absence of their owners without authorization of the government agencies with proper jurisdiction.”*

Many Vietnamese Americans did return to Vietnam to reclaim their properties. A very small number of them, after paying hefty bribes to influential government officials, got their properties back.

For the remaining victims, their slim hope of ever reclaiming their properties vanished in late 2003 when Vietnam’s National Assembly passed Resolution 23/2003/QH11. Article 1 of this Resolution states that the Vietnamese government will no longer entertain any claim for the return of land or residential housing already placed under state management. In other words, this Resolution changed the status of these vacant properties from being “managed” to being “nationalized”. By then, some 600,000 Vietnamese refugees in the U.S. had already become naturalized U.S. citizens. We estimate, conservatively, that some 100,000 such vacant properties belonged to U.S. citizens when they were nationalized.

Through research we have found that this Resolution affected properties of U.S. citizens not only in South Vietnam but also in North Vietnam. In 1954, when the country was divided into North and South, some one million North Vietnamese evacuated to the South, leaving behind their land and real estate. The Communist government in the North “managed” those vacant real properties until they became nationalized in November 2003.

The confiscation of the properties of US citizens continues to this day in many different forms. Below are prevalent ones.

- (1) When real property in Vietnam that is jointly owned by a US citizen is sold, the Vietnamese government would automatically keep the share that belongs to the US citizen.
- (2) After 1975 the Vietnamese government ordered wealthy families in South Vietnam to deposit gold, jewelry and cash into state banks. They were issued a depository certificate, which a number Vietnamese Americans still hold on to. For years they have attempted in vain to demand the return of their assets deposited at Vietnamese state banks. These properties have never been nationalized.
- (3) Many Vietnamese Americans have lawfully inherited real estate in Vietnam from their deceased parents. As the Vietnamese government sweepingly expropriates entire areas, including parishes and villages, for commercial purposes or simply to target non-

conformist religious denominations, an increasing number of U.S. citizens are robbed of their properties with little or no compensation. The case of the all-Catholic Parish of Con Dau in Da Nang City serves as vivid illustration. In May 2010 the government of Da Nang City used force and violence to evict residents from their 135-year old parish. There are many US citizens with properties in Con Dau Parish. Right at this moment, government workers escorted by the police are about to bulldoze the ancestral home that belong to Vietnamese Americans present in the audience. With the Chairman's permission I am including for the hearing's Congressional record the report of the Association of Con Dau Parishioners that has been submitted to the UN Human Rights Council for the Universal Periodic Review of Vietnam.

US laws are very clear towards a foreign government that confiscates the properties of US citizens:

- (1) In 1949 Congress passed the International Claims Settlement Act to establish the U.S. Federal Claims Settlement Commission, the function of which is to adjudicate the claims of U.S. citizens against foreign governments.
- (2) The Foreign Assistance Act of 1961, as amended in 1964 (22 USC 2370(e)), stipulates that the President shall suspend all assistance to a country the government of which has expropriated the properties of U.S. citizens, and the U.S. government shall vote against loans to that government from international financial institutions such as the World Bank and the Asian Development Bank.
- (3) The Trade Act of 1974 bars the U.S. President from according Generalized System of Preferences (GSP) to a foreign government that has *“nationalized, expropriated or otherwise seized property of U.S. citizens or corporations without providing, or taking steps to provide prompt, adequate, and effective compensation, or submitting such issues to a mutually agreed forum for arbitration.”*

From 1980 to 1995, the U.S. government successfully enforced these laws to compel the Vietnamese government to pay US \$208 million in compensations to close to 200 U.S. citizens whose properties had been confiscated by the invading Communist troops in 1975. There was no naturalized U.S. citizen of Vietnamese origin among those benefiting from this successful intervention by the U.S. government.

Repeated appeals by Vietnamese Americans for equal treatment have been ignored by the present Administration. The U.S. Department of State Legal Adviser's Office, which is tasked with the responsibility of representing U.S. citizens in disputes with foreign governments, has set three conditions for its espousal of the claims of U.S. citizens.

- (1) The claimant must be a U.S. citizen at the time the claim arose and continuously thereafter. As already explained, by the time the Vietnamese government officially nationalized land and real estate that belonged to Vietnamese refugees in the U.S., most of these Vietnamese had already acquired U.S. citizenship. I am not aware of any Vietnamese Americans who have ever renounced their U.S. citizenship.
- (2) The expropriation is a violation of international law that is attributable to the foreign government. Title VII of the International Claims Settlement Act of 1980 found that international law entitles U.S. nationals to just compensation for their expropriated property in Vietnam, and that the Communist authorities' expropriation of American property after the fall of the South Vietnam was not a lawful taking because the invasion which led to the taking violated the 1973 Paris Peace Accords and the U.N. Charter. This served as the basis for our government to pursue claims against the Vietnamese government between 1980 and 1995.

The same basis should apply for naturalized US citizens of Vietnamese origin. The Communist government of North Vietnam not only broke the Paris Peace Accord and invaded South Vietnam but also executed some 60,000 South Vietnamese prisoners of war, sent over a million members of the South Vietnamese government and military to "re-education" camps where detainees were subjected to torture, evicted millions of South Vietnamese city dwellers to the "New Economic Zones" – the Vietnamese version of the Soviet Gulag, and committed other atrocities against people of faith, intellectuals, journalists, business owners, indigenous peoples, ethnic minorities, and Amerasians -- children of US servicemen and Vietnamese women born during the Vietnam War, among others. In 1978 the Vietnamese government started to evict Vietnamese citizens of Chinese origin from Vietnam, pushing them out to sea which resulted in the Vietnamese "boat people" saga. Over a million Vietnamese left their country by sea or by land between 1975 and 1990. The Communist authorities occupied and "managed" the land and homes they left behind. Such taking is clearly in violation of international law.

- (3) The claimant must exhaust local remedies in the relevant country, or demonstrate that doing so would be futile. Resolution 23/2003/QH11, passed by the Vietnamese National Assembly passed in November 2003, made any attempts at seeking local remedy futile. The Vietnamese government has since 2003 cited this resolution to dismiss claims made by Vietnamese Americans. There is presently no local remedy available under Vietnamese law.

I have personally helped numerous Vietnamese Americans, including my own parents, to write to the State Department's Legal Adviser. In response, the Legal Adviser's office has provided a list of law offices in Vietnam and told claimants to "*contact and hire an attorney in Vietnam to*

help pursue any rights and remedies that [you] may have with regard to [your] property under domestic law in the local jurisdiction.”

I have also helped these same Vietnamese Americans to write to the U.S. Trade Representative, asking him to include compensations for confiscated properties of U.S. citizens as part of the ongoing trade negotiations with Vietnam. The U.S. Trade Representative’s response is very clear: *“The United States has a broad and multifaceted relationship with Vietnam. Vietnam’s participation with us on a range of trade initiatives creates significant new opportunities for U.S. exporters while also providing a unique opportunity to press for real change on longstanding concerns on labor, human rights and other concerns...”* Just compensation for properties taken from U.S. citizens is evidently not one of those concerns.

Last August BPSOS launched an online petition using the White House’s “We The People” website calling on the President to defend the rights and properties of U.S. citizens:

“Our President should demonstrate his commitment to defending the rights and interests of US citizens by applying the prohibition clause of the Foreign Assistance Act (22 USC 2370(e)) to Vietnam, calling on its government to freeze further expropriations of US properties, and conditioning GSP or any further trade benefits on the return of all properties that belong to US citizens or payment of fair compensation.”

Even though the White House had promised to answer any petition that collected 25,000 signatures within 4 weeks and even though our petition campaign exceeded this threshold within 3 weeks, to this day there has been no response from the White House.

Apparently our Administration is dodging the issue, possibly fearing that it might derail its plan to pursue, in the words of the U.S. Trade Representative, *“a wide array of economic, security, and strategic interests with Vietnam.”* The rights and the properties of U.S. citizens should be national interests of highest priority for both the Administration and Congress.

The right to own property and the right to be protected against being arbitrarily deprived of one’s property is enshrined in Article 17 of the Universal Declaration of Human Rights.

A hundred thousand U.S. citizens being deprived of their rightful properties in the range of U.S. \$50 - \$100 billion is no small matter of national interest.

I therefore would like to call on Congress, via this Committee, to:

- (1) Request that the U.S. Trade Representative includes in the Trans-Pacific Partnership (TPP) negotiations with Vietnam our government’s demand that the Vietnamese government first agrees to pay compensations for all affected U.S. citizens. A number of members of Congress are concerned about the potential loss of \$4 billion over 8 years for

the U.S. textile industry if Vietnam were to join the TPP. That certainly is an issue of national interest. And so should be the actual loss of \$50 - \$100 billion affecting an estimated 100,000 U.S. citizens spread out in practically every Congressional district and state.

- (2) Request that the Legal Adviser's Office espouses the claims of U.S. citizens against the Vietnamese government, negotiates with the Vietnamese government terms of settlement, and demands the suspension of all land expropriations throughout the country until a process is in place to assure that no properties of U.S. citizens be expropriated without due compensations.
- (3) Call on the President to immediately suspend all assistance to Vietnam pending the results of the negotiation over compensations.
- (4) Authorize the U.S. Federal Claims Settlement Commission to start adjudicating claims by Vietnamese Americans against the Socialist Republic of Vietnam.
- (5) Commission the GAO to study the different forms of confiscation of properties employed by the Vietnamese government over the past 38 years, and to assess their respective impacts on U.S. citizens.